

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2014 MAY 22 P 3: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV State Tax Department TITLE NUMBER: 110

RULE TYPE: Procedural CITE AUTHORITY: §11-13A-5a(c)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13AA

TITLE OF RULE BEING AMENDED: INFORMATION TO BE UTILIZED FOR CALCULATING THE DISTRIBUTION
OF OIL AND GAS SEVERANCE TAXES.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 23, 2014 AT 10:00 AM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

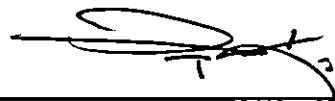
LEGAL DIVISION

STATE TAX DEPARTMENT

P.O. BOX 1005

CHARLESTON, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


5-16-14
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

110 CSR 13AA

Brief Summary and Statement of Circumstances

The amendment to the Procedural Rule, Title 110, Series 13AA, "Information to be Utilized for Calculating the Distribution of Oil and Gas Severance Taxes," clarifies the distribution of oil and gas severance taxes to municipalities and counties under W. Va. Code §11-13A-5a.

The amendment specifies the distribution will take place by October 1st of each year following the end of a taxable year unless the Tax Commissioner determines more data is necessary.

The amendment acknowledges that there is a lag time between the oil and natural gas production data from West Virginia Department of Environmental Protection ("DEP") and the time period over which the oil and natural gas severance tax becomes payable to the State. The Tax Division will use the most recent reasonably complete oil and natural gas production available from DEP. Once a distribution has been made, no adjustment will be made based on DEP production data adjustments. The Tax Division will not be held responsible for any issue arising out of DEP production data, statistics or reports.

TITLE 110
PROCEDURAL RULE
WEST VIRGINIA DEPARTMENT OF TAX AND REVENUE
STATE TAX DIVISION

FILED
2014 MAY 22 P 3:24

SERIES 13AA
INFORMATION TO BE UTILIZED FOR CALCULATING THE
DISTRIBUTION OF OIL AND GAS SEVERANCE TAXES. OFFICE WEST VIRGINIA
SECRETARY OF STATE

§110-13AA-1. General.

1.1. Scope. -- The purpose of this rule is to set forth the procedures to be followed by the West Virginia Department of Tax and Revenue for distributing the municipal and county shares of the oil and gas severance taxes under W. Va. Code §11-13A-5a.

1.2. Authority. -- W. Va. Code §11-13A-5a(c).

1.3. Filing Date. --

1.4. Effective Date. --

§110-13AA-2. Interpretive Note.

This procedural rule shall be read in pari materia with the Severance Tax Legislative Rule (110 C.S.R. 13A) previously promulgated by the Tax Commissioner. The definitions, policies and procedures provided in 110 C.S.R. 13A are equally applicable to this procedural rule. Should there be any inconsistency between the promulgated legislative rule and this procedural rule, the legislative rule shall control, except to the extent the legislative rule does not reflect an amendment to the Severance Tax laws which is addressed in this or another procedural rule promulgated by the Tax Commissioner as provided in W. Va. Code §29A-3-1 et seq.

§110-13AA-3. Definitions.

Where applicable, the definitions in 110 C.S.R. 13A are incorporated by reference into this rule.

§110-13AA-4. Activity For Which Information is Needed.

4.1. Effective July 1, 1996, W. Va. Code §11-13A-5a requires that 5% of the Severance Tax imposed upon the severance of oil and gas in West Virginia is to be dedicated to the use and benefit of the counties and municipalities in West Virginia. Effective July 1, 1997, the percentage is increased to 10%.

4.2. W. Va. Code §11-13A-5a requires that the funds be deposited by the West Virginia State Tax Division (hereinafter "Tax Division") from time to time into specified accounts created in the State Treasurer's Office. The Tax Division is required to deposit 75% of the dedicated funds in the "Oil and Gas County Revenue Fund," and 25% is to be deposited in the "All

Counties and Municipalities Revenue Fund."

4.2.1. For purposes of this rule, "from time to time" means by October 1st of each year following the end of a taxable year, unless the Tax Commissioner determines that more data is necessary to ensure that the proper distribution is made.

4.3. In order for the funds to be properly distributed, it is necessary to determine the counties where the oil and gas was severed and the amounts of oil and gas severed in each county.

4.4. The Tax Division will treat gas and oil as having been severed in the county in which the wellhead is located where the oil and gas were first brought to the surface of the Earth.

§110-13AA-5. Information Gathering Process.

5.1. Information as to the location of wellheads and the amount of oil and gas severed by county is currently being gathered by the West Virginia Department of Environmental Protection (hereinafter "DEP") under 35 C.S.R. 4-15.1 through reports which are submitted by operators of oil and gas wells.

5.2. Because the information reported to the DEP is the information needed by the Tax Division to carry out the requirements imposed by W. Va. Code §11-13A-5a, the Tax Division will use the most recent reasonably complete oil and gas production data provided to the Tax Division by the DEP for this purpose.

5.3. The Tax Division and the DEP will mutually agree on the technical procedures to be established to facilitate the information sharing activities.

5.4. The Tax Division will utilize the most recent reasonably complete oil and gas production data provided by the DEP to calculate the share of oil and natural gas severance tax receipts to be distributed. Oil and gas production data used to calculate county and municipal shares of oil and natural gas severance tax revenues for distribution should, ideally, reflect production data, as near as possible, for the same time period as the time period over which the oil and natural gas severance tax became payable to the State. However, compilation of DEP production data will lag behind the State's receipt of oil and natural gas severance tax revenues.

5.5 No adjustment payment, supplemental payment, recapture, refund, credit or other modification may be made to an amount distributed subsequent to payment of a distribution to any county or local distributee, based on DEP production data adjustments occurring subsequent to the distribution. In no case may the Tax Division be held responsible or accountable for any issue arising out of DEP production data, statistics or reports.

§110-13AA-6. Presumptions.

6.1. For those tax returns or other reports wherein the operator fails to report separate amounts as gross proceeds for oil and separate amounts as gross proceeds for natural gas that was severed during the reporting period, the Tax Division will attempt to obtain the correct information from those operators. If the Tax Division is unable to obtain the necessary

information after a reasonable effort to do so, the Tax Division will apply the presumption that gross proceeds from oil and gross proceeds from gas, respectively, from each well is consistent with the statewide average proportional production of oil and gas from all reporting wells, and that gross receipts from the production of wells for which the operator fails to report separate amounts as gross proceeds for oil and separate amounts as gross proceeds for natural gas is consistent with the statewide average for proportional gross receipts for oil and gas respectively.

6.2. Example:

(1) A Taxpayer files an annual report with the Tax Division stating that the Taxpayer has \$1 million gross receipts from the severance of natural gas and the severance of oil. However, the Taxpayer does not state how much of the gross receipts come from each.

(2) The Tax Division contacts the Taxpayer to seek the missing information. The Taxpayer fails to report the information.

(3) The Tax Division determines that the statewide average production of oil and gas based on gross receipts, is proportionally 88% gas and 12% oil for the production year.

(4) The Tax Division will presume that the Taxpayer's gross receipts from gas and oil production are consistent with the statewide average, and will apportion the gross receipts of the Taxpayer accordingly.

$\$1,000,000 \times 88\% = \$880,000$ gross receipts from severance of natural gas

$\$1,000,000 \times 12\% = \$120,000$ gross receipts from severance of oil

The Tax Division will apportion the tax derived from the Taxpayer's remittance of severance tax accordingly.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Information to Be Utilized for Calculating the Distribution of Oil and Gas Severance Taxes (110 CSR 13AA)

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street

Charleston, WV 25301

Phone Number: (304) 558-5330

Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, clarifies what information is to be utilized for calculating the amount of Severance Tax on oil and the amount of Severance Tax on natural gas to be distributed to local governments pursuant to W. Va. Code §11-13A-5a. Since the rule does not alter the commodities subject to tax or the tax rate, approval of the rule will have no impact on State costs and revenue.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$0	\$0
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$0	\$0
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: Information to Be Utilized for Calculating the Distribution of Oil and Gas Severance Taxes (110 CSR 13AA)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

Approval of this proposed rule will not increase or decrease revenue or costs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The intent of this proposed rule is to clarify what information is to be utilized for calculating the amount of Severance Tax on oil and the amount of Severance Tax on natural gas to be distributed to local governments pursuant to W. Va. Code §11-13A-5a. Since the rule does not alter the commodities subject to tax or the tax rate, approval of the rule will have no impact on State costs and revenue.

Date: 5-16-14

Signature of Agency Head or Authorized Representative:



Robert S. Kiss, Cabinet Secretary
West Virginia Department of Revenue